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No. 91-571

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

ROBERT J. TAYLOR, Trustee,

Petitioner,

v.

FREELAND & KRONZ, a Partnership; WENDELL G. FREELAND; and RICHARD F. KRONZ,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under Section 522(*l*) of the Bankruptcy Code, a bankruptcy court must exempt property from the bankruptcy estate, even though the debtor had no colorable basis for claiming the exemption, because no one objected to the claimed exemption within the period set forth in Bankruptcy Rule 4003(b).

PARTIES TO THE PROCEEDING

The parties to the proceedings in the court below were: Robert J. Taylor, as Trustee in the bankruptcy proceeding of Emily Davis; Freeland & Kronz, a partnership; Wendell G. Freeland; and Richard F. Kronz.

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S. Rep. No. 95-989, 95th Cong., 2nd Sess., *reprinted in*, 1978 U.S. Code Cong. & Admin. News 5787 19

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. _____

ROBERT J. TAYLOR, Trustee,

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

Robert J. Taylor, Trustee, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (App. 1a) is reported at 938 F.2d 420. The memorandum opinion of the United States District Court for the Western District of Pennsylvania (App. 18a) is reported at 118 Bankr. 272; its order affirming the judgment of the bankruptcy court is unreported (App. 16a). The memorandum opinion of the United States Bankruptcy Court for the Western District of Pennsylvania (App. 30a) is reported at 105 Bankr. 288; its judgment (App. 28a) is reported at 105 Bankr. 294.

JURISDICTION

The court of appeals entered its judgment on July 8, 1991. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1)(1988).

STATUTES AND RULES INVOLVED

Section 522 of the Bankruptcy Code, 11 U.S.C. § 522 (1988), provides in pertinent part:

> (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the

other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is --

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) Any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

* * *

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive --

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless --

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to --

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the

extent reasonably necessary for the support of the debtor and any dependent of the debtor.

* * *

(*l*) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt. . . .

Rule 4003(b), Federal Rules of Bankruptcy Procedure, provides in pertinent part:

(a) Claim of Exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objections to Claim of Exemptions. The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the court. Copies of the objections shall be

> delivered or mailed to the trustee and to the person filing the list and the attorney for such person.[1]
>
> (c) Burden of Proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections. . . .

Rule 9011, Federal Rules of Bankruptcy Procedure, provides in pertinent part:

> (a) Signature. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

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[1] The phrase "or supplemental schedules" was added to subsection (b) by the 1991 amendments to the Bankruptcy Rules, effective August 1, 1991.

> and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee. . . .

STATEMENT

This case presents the question of whether, under Section 522(*l*) of the Bankruptcy Code, 11 U.S.C. § 522(*l*), a debtor may obtain an exemption for certain property, even though there was absolutely no legal basis for claiming such an exemption, because no one filed a formal objection to the claimed exemption within the period set forth in Bankruptcy Rule 4003(b).

Emily Davis ("Davis") filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 24, 1984 (Appendix filed with Third Circuit, hereinafter referred to as "Record on Appeal" ("ROA"), at 40a). At the time of the filing, she was pursuing a lawsuit against Trans World Airlines, Inc. ("TWA") for employment discrimination, in which TWA had been found liable for wrongfully denying her a promotion (ROA 101-27). TWA had appealed the order finding liability to the

Pennsylvania Supreme Court, and, on the date that Davis filed her bankruptcy petition, was still awaiting the Supreme Court's decision (ROA 128-29). The TWA appeal ultimately proved to be unsuccessful (ROA 128-29, 141). Damages were to be determined after further proceedings (ROA 101).

Section 522(b) of the Bankruptcy Code, 11 U.S.C. § 522(b), provides that "an individual debtor may exempt from property of the estate" either the types of property listed in 11 U.S.C. § 522(d) or, in the alternative, property which is exempt under other legal provisions (including state and local law). The procedure for claiming these exemptions is set forth in 11 U.S.C. § 522(*l*), which requires the debtor (or a dependent of the debtor) to "file a list of property that the debtor claims as exempt under" 11 U.S.C. § 522(b). Under Bankruptcy Rule 4003(b), "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to [Bankruptcy] Rule 2003(a). . . ." The bankruptcy court then determines whether the claimed exemptions are valid, and if they are, the property at issue is removed from the bankruptcy estate.

On the schedules which she filed with her bankruptcy petition on October 24, Davis claimed an exemption, under 11 U.S.C. §§ 522(b) and (d), for:

> Proceeds from lawsuit - Winn v. TWA
> Claim for lost wages

(ROA 59). On the portion of the form in which she was to state the "value" of those proceeds, she indicated that the value was "unknown." *Id.*

On November 26, 1984, Petitioner Robert Taylor ("Taylor") was appointed trustee in the bankruptcy proceeding (ROA 41). On January 4, 1985, he conducted the meeting of the creditors held pursuant to Bankruptcy Rule 2003(a) and was advised by either Davis or her bankruptcy counsel that Davis could recover as much as $90,000 from the TWA lawsuit (ROA 40a, 70).

Neither Taylor nor any of the creditors filed any objections, within the 30-day period specified by Rule 4003(b), to the exemptions claimed by Davis. Although Taylor considered the proceeds from the TWA lawsuit (less "costs and attorney fees") to be the property of the estate, he wanted to find out, before making any objections to the claimed exemptions, how much money (if any) Davis would actually recover from that lawsuit (ROA 227, 230, 234-35). Accordingly, in a letter of January 7, 1985 to Respondents Wendell G. Freeland ("Freeland") and Richard F. Kronz ("Kronz"), Taylor advised them of his position that "the net proceeds of said suit would be an asset in the bankruptcy estate" and asked about the status of the litigation (ROA 73). In a letter dated January 9, 1985, an associate of Freeland & Kronz responded by informing Taylor that the Pennsylvania Supreme Court had ruled in Davis' favor and that Freeland & Kronz had calculated the damages (which had not yet been judicially determined) at $110,000 (ROA 74).

Davis was discharged from bankruptcy on October 16, 1985, but the case was not closed (ROA 40a, 41). On September 11, 1987, Davis executed a settlement agreement with TWA under which TWA was to pay her and her attorneys approximately $110,000, including $23,483.75 (less applicable withholding taxes) "as and for

back pay or front pay," $23,483.75 "as and for all alleged tort claims or any other claims not represented [sic] asserted wage losses," and $63,032.50 "as and for attorney's fees and expenses. . . ." (ROA 81-92). Neither Davis nor her attorneys informed Taylor of the settlement until May of 1988, after Taylor had written to Freeland & Kronz requesting information on the status of the lawsuit (ROA 48, 75).

In October, 1988, Taylor filed a complaint against Davis, Freeland & Kronz, Freeland, and Kronz seeking to recover for the bankruptcy estate $79,016.25 which had been paid as part of the TWA settlement (ROA 8-17). The bankruptcy court ordered that the defendants return to Taylor the $23,483.75 paid as recovery for tort claims, on the grounds that there was "no statutory basis" under 11 U.S.C. § 522(d) for exempting a tort recovery (App. 29a, 41a).[2] It rejected, on the grounds of judicial estoppel, the defendants' assertion that the sum in question actually represented lost wages, but had been described as being for tort claims in order to avoid paying taxes on it (App. 41a). It also held that while neither Taylor nor any of the creditors had filed an objection to the claimed exemption within the period specified by Bankruptcy Rule 4003(b) (within 30 days after the meeting of creditors), Section 522(*l*) implicitly requires that "there be a statutory basis for the claimed exemption before the failure of any party in interest to timely object

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[2] The bankruptcy court concluded that requiring the defendants to return $23,483.75 would "produce a res sufficient to pay all of Debtor's [Davis'] creditors" and that it was therefore "not necessary . . . to determine" whether there was any statutory basis under Section 522(d) for exempting the remaining portions of the TWA settlement (App. 42a).

to it has any legal effect" (App. 38a). The bankruptcy court reasoned that Section 522(*l*) incorporates by reference the provisions of Section 522(b), which limits exemptions to those available under federal, state, or local law, and that "[i]f Debtor may select in any manner her exemptions, then no purpose is served by the inclusion of" Section 522(b) (*id.*). The bankruptcy court also noted that permitting "exemption by declaration" would "encourage certain debtors of questionable integrity to claim *all* of their property as exempt," in the hope that the trustee would fail to object, and that "constant litigation, if not outright chaos, would result" (App. 39a) (emphasis in original). It concluded that "this surely would not be the congressional intent" (*id.*).

The district court affirmed the bankruptcy court's decision, agreeing both that (1) permitting exemptions for which there was no "statutory basis" would render Section 522(b) "nugatory" and (2) permitting "exemption by declaration" would hinder "the orderly administration of the debtor's estate" (App. 23a).

The Third Circuit, however, reversed, and held that the failure of the trustee (or any other party in interest) to file an objection to the claimed exemption within the period specified by Bankruptcy Rule 4003(b) meant that the proceeds of the TWA settlement were exempt under Section 522(*l*). (App. 15a). The court of appeals acknowledged that "[c]ourts have taken three different approaches to" the interpretation of Section 522(*l*): (1) that an exemption must be allowed if a timely objection is not filed; (2) that exemptions which are invalid under Section 522(b) should not be allowed, regardless of whether a timely objection was filed; and (3) that if a timely objection is not filed, courts are not to fully

examine the validity of the exemption, but must still deny the exemption if there was no "good-faith statutory basis" for claiming it (App. 7a-8a). The court of appeals, while adopting the first of those three approaches, also acknowledged that both the Eighth Circuit, in *Halverson v. Peterson (In re Peterson)*, 920 F.2d 1389 (8th Cir. 1990) and the Sixth Circuit, in *Munoz v. Dembs* (*In re Dembs*), 757 F.2d 777 (6th Cir. 1985), have adopted the third approach (App. 8a).

In reaching its result, the Third Circuit reasoned that (1) the text of Section 522(*l*) and Bankruptcy Rule 4003(b) "admits of no exceptions to the bright-line procedural rule," (2) that "[n]othing in the legislative materials suggests that any exceptions to this bright-line rule were intended," (3) that "the evolution of the bankruptcy laws suggests that Congress intended to shift the burden of objection from the debtor to the other parties in interest", and (4) that, as a matter of policy, "[t]he time limits and obligations established by section 522(*l*) and Rule 4003(b) serve the dual purposes of finality and certainty." (App. 11a-12a). It also argued that Bankruptcy Rule 9011 "authorizes sanctions" for bad-faith exemption claims and "should act as the primary deterrent" against such claims. (App. 14a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL COURTS CONSTRUING SECTION 522(*l*) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4003(b)

The court below recognized that its decision stands in direct conflict with the Eighth Circuit's decision in *Halverson v. Peterson (In re Peterson)*, 920 F.2d 1389 (8th Cir. 1990) and the Sixth Circuit's decision in *Munoz v. Dembs* (*In re Dembs*), 757 F.2d 777 (6th Cir. 1985) (App. 8a-9a) ("We respectfully disagree with the conclusion reached by the courts below and by the Courts of Appeals for the Sixth and Eighth Circuits."). *See also Sherk v. Texas Bankers Life & Loan Ins. Co.* (*In re Sherk*), 918 F.2d 1170, 1174 (5th Cir. 1990) (agreeing with *Peterson* and *Dembs*). In *Peterson*, the Eighth Circuit noted that Section 522(*l*) of the Bankruptcy Code and Bankruptcy Rule 4003(b) require trustees to object to claimed exemptions within thirty days after the creditor's meeting or any amendment of the schedules, but the court also concluded that wooden enforcement of that time limit would lead to anomalous results. 920 F.2d at 1392. The court held that groundless exemptions cannot be legitimized solely because the trustee raised no objection within thirty days. *Id.* at 1393. The court went on to find that the debtors did have a good-faith statutory basis under Minnesota law for exempting as a homestead a house built on the debtor's father's property, and therefore allowed the exemption. *Id.* at 1394-95. Likewise, in *Dembs* the Sixth Circuit rejected mechanical enforcement of the thirty-day time limit on the grounds

that "there must be a good-faith statutory basis for exemption" and that to allow exemptions when there was no good-faith basis for them would amount to "exemption by declaration." 757 F.2d at 780.[3] District Courts and bankruptcy courts in other circuits have agreed that an exemption should not be granted, even if no timely objection was made, unless there was a good-faith statutory basis for the claimed exemption. *In re Kingsbury*, 124 Bankr. 146 (Bankr. D. Me. 1991); *Clark v. Kazi* (*In re Kazi*), 125 Bankr. 981 (Bankr. S.D. Ill. 1991); *Pittsburgh Nat'l Bank v. Wissman (In re Wissman)*, 121 Bankr. 739, 742 (Bankr. N.D. W. Va. 1990); *In re Hansen*, 101 Bankr. 33, 35-36 (Bankr. N.D. Ind. 1988); *Bass v. Hall*, 79 Bankr. 653, 655-66 (W.D. Va. 1987) (following *Dembs*).

As the Third Circuit recognized, its decision also conflicts with a second line of cases construing Section 522(*l*) and Rule 4003(b) followed by numerous federal courts. *In re Staniforth*, 116 Bankr. 127, 131 (Bankr. W.D. Wis. 1990); *Stutterheim v. First State Bank, Alemena, KS (In re Stutterheim)*, 109 Bankr. 1010, 1013 (D. Kan. 1989); *In re Velis*, 109 Bank. 64 (Bankr. D. N.J. 1989), *aff'd*, 123 Bankr. 497 (D. N.J. 1991); *In re Ehr*, 116 Bankr. 665 (Bankr. E.D. Wis. 1988); *Geekie v. Owen* (*In re Owen*), 74 Bankr. 697 (Bankr. C.D. Ill. 1987); *Palatine Nat'l Bank v. Harrigan* (*In re Harrigan*), 74 Bankr. 224, 230 n.4 (N.D. Ill. 1987); *In re Rollins*, 63 Bankr. 780, 783-84 (Bankr. E.D. Tenn. 1986) (nevertheless citing *Dembs* with

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[3] However, the court allowed the exemption at issue because the trustee had not objected to it until after the debtor was discharged. *Dembs*, 757 F.2d at 781.

approval); *Hackett v. Commerical Banking Corp.* (*In re Hackett*), 13 Bankr. 755, 757 (Bankr. E.D. Pa. 1981). This line of cases holds that when a debtor's claimed exemption is not valid under 11 U.S.C. § 522(b), Section 522(*l*) requires no objection by the trustee to disallow the exemption. The thirty-day time limit for trustees' objections is inapplicable in this context. *In re Bennett*, 36 Bankr. 893, 895 (Bankr. W.D. Ky. 1984).

The Third Circuit's decision is supported by a third line of cases holding that exemptions that are not objected to within the thirty-day period are automatically exempt, regardless of their basis in law. *First of America Bank v. Gaylor* (*In re Gaylor*), 123 Bankr. 236, 238 (Bankr. E.D. Mich. 1991); *In re Bradlow*, 119 Bankr. 330 (Bankr. S.D. Fla. 1990); *In re Duncan*, 107 Bankr. 754 (Bankr. W.D. Okla. 1988); *Keenan v. Mt. Carmel Credit Union* (*In re Keenan*), 106 Bankr. 239, 242 (Bankr. D. Colo. 1989); *In re Shrum*, 98 Bankr. 995, 997 (Bankr. W.D. Okla. 1989); *In re Caruthers*, 87 Bankr. 723, 726 (Bankr. N.D. Ga. 1988); *In re Montgomery*, 80 Bankr. 385, 387-88 (Bankr. W.D. Tex. 1987); *Doyle v. Grossman* (*In re Grossman*), 80 Bankr. 311 (Bankr. E.D. Pa. 1987); *In re Payton*, 73 Bankr. 31 (Bankr. W.D. Tex 1987); *In re Hawn*, 69 Bankr. 567, 568-69 (Bankr. E.D. Tenn. 1987) (nevertheless citing *Dembs* with approval); *In re Magosin*, 75 Bankr. 545 (Bankr. E.D. Pa. 1987); *In re Richards*, 57 Bankr. 662 (Bankr. D. Nev. 1986); *In re Anselmi*, 52 Bankr. 479, 485 (Bankr. D. Wyo. 1985); *Kretzer v. DFW Fed. Credit Union* (*In re Kretzer*), 48 Bankr. 585, 587 (Bankr. D. Nev. 1985); *In re Wiesner*, 39 Bankr. 963, 964 (Bankr. W.D. Wis. 1984); *In re Blum*, 39 Bankr. 897, 898 (Bankr. S.D. Fla. 1984); *In re Gullickson*, 39 Bankr. 922, 923 (Bankr. W.D. Wis. 1984); *see also Clark v. Brayshaw*

(*In re Brayshaw*), 912 F.2d 1255, 1256-57 (10th Cir. 1990) (extension for filing objections must be granted within the thirty-day time period or objections are waived); *In re Brandstaetter*, 767 F.2d 324, 327 (7th Cir. 1985) (decided prior to enactment of Rule 4003(b)).

The federal courts have been unable to reach a consensus on this important issue. This irreconcilable, three-way split of authority as to the meaning of Section 522(*l*) of the Bankruptcy Code and Bankruptcy Rule 4003(b) warrants this Court's review.

II. THE DECISION BELOW IS CONTRARY TO THE LANGUAGE OF BANKRUPTCY CODE SECTION 522(*l*) AND BANKRUPTCY RULE 4003(b) AND THEIR UNDERLYING POLICY

Under the Bankruptcy Code, exemptions are limited to either those that are listed in 11 U.S.C. § 522(d) or, alternatively, those that are exempt under other federal law, state law, or local law. 11 U.S.C. § 522(b). Section 522(*l*) provides that "[t]he debtor shall file a list of property that the debtor claims *as exempt under [section 522(b)]*." 11 U.S.C. § 522(*l*) (emphasis added). Thus, Congress incorporated by reference into Section 522(*l*) the requirement that exemptions be based in federal, state, or local law. *Sherk*, 918 F.2d at 1174; *Kingsbury*, 124 Bankr. at 148 & n.9; *Bennett*, 36 Bankr. at 895. Under the statute, claimed exemptions without a basis in law cannot qualify as legitimate exemptions simply because a party in interest makes no objection within the thirty-day period. *Peterson*, 920 F.2d at 1393.

In reaching its decision, the court below focused only on the portion of the statute stating, "Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). *Taylor v. Freeland & Kronz*, 938 F.2d 420 (3d Cir. 1991) (App. 6a, 9a). The Third Circuit's so-called "literal" approach failed to recognize the interdependence of Sections 522(b) and 522(*l*). *See American Hosp. Ass'n v. NLRB*, 111 S. Ct. 1539, 1542 (1991) (statutory provisions must be read as a whole). Read in conjunction, these sections allow debtors to exempt only property that is expressly exempted by statute, not property that the debtor chooses to list as exempt without any grounds for doing so. *Sherk*, 918 F.2d at 1174; *Kingsbury*, 124 Bankr. at 148 & n.9; *Bennett*, 36 Bankr. at 895.

Moreover, permitting debtors to obtain groundless exemptions would clearly contravene "the general [Bankruptcy] Code policy of maximizing the value of the bankruptcy estate." *Toibb v. Radloff*, 111 S. Ct. 2197, 2201 (1991). *See also* S. Rep. No. 95-989, 95th Cong., 2nd Sess. 5, *reprinted in*, 1978 U.S. Code Cong. & Admin. News 5787, 5791 (". . . the policy of the [1978] revision of the Bankruptcy Act [was] to include all of the property of the debtor in the bankruptcy case and to allow the trustee more easily to recover property that may have been transferred by the debtor"). And to reward debtors for claiming groundless exemptions would simply encourage "debtors of questionable integrity to claim *all* of their property as exempt," in the hope that objections might be overlooked. *In re Davis*, 105 Bankr. 288, 293 (Bankr. W.D. Pa. 1989) (App. 39a) (emphasis in original). The result would be "constant litigation, if not outright chaos. . . ." *Id.*

III. THE PROPER INTERPRETATION OF SECTION 522(*l*) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 4003(b) IS AN IMPORTANT AND RECURRENT ISSUE

The proper interpretation of Section 522(*l*) of the Bankruptcy Code and Bankruptcy Rule 4003(b) is an important, frequently recurring problem in federal bankruptcy law. The question presented has percolated in the lower federal courts for more than seven years and has drawn conflicting comment from six courts of appeals, *see Taylor v. Freeland & Kronz*, 938 F.2d 420 (App. 1a); *Peterson*, 920 F.2d 1389; *Sherk*, 918 F.2d at 1174; *Brayshaw*, 912 F.2d at 1256-57; *Dembs*, 757 F.2d 777; *Brandstaetter*, 767 F.2d at 327, and myriad bankruptcy courts. *See* discussion *infra*, at 15-18. This confusion threatens the uniform administration of the Bankruptcy Code and, absent this Court's review, will continue to yield disparate results in factually similar circumstances.

To illustrate the scope of the problem, almost 420,000 individual Chapter 7 cases were filed in the federal courts in 1989 alone. *See Reports of the Proceedings of the Judicial Conference of the United States, Annual Report of the Director of the Administrative Office of the United States Courts* (1989), Tables F & F-2, at 358, 362. Exemptions and the issues surrounding exemptions are essential elements of virtually every individual Chapter 7 bankruptcy.

Resolution of the question presented -- whether a debtor may obtain a groundless exemption solely because no party in interest objected within the time allotted

under Bankruptcy Rule 4003(b) -- will also cast light on related bankruptcy issues. *Compare In re Frazier*, 104 Bankr. 255, 258 (Bankr. N.D. Cal. 1989) (debtor may not avoid liens under Section 522(f) because no party in interest objected to the claimed exemptions under Section 522(*l*)) and *Montgomery*, 80 Bankr. 385 (same) with *In re Van Pelt*, 83 Bankr. 617, 618-19 (S.D. Iowa 1987) (Rule 4003(b) precludes creditors who fail to object to exemptions within thirty days from raising their claims under Section 522(f)). *Compare also Brayshaw*, 912 F.2d at 1256-57 (court may not extend time for filing objections after the Rule 4003(b) period has expired) with *In re Williams*, 124 Bankr. 864, 866 (Bankr. N.D. Fla. 1991) (court may extend time for filing objections after the thirty-day period has expired). *See also Frederick County Nat'l Bank v. Lazerow* (*In re Lazerow*), 119 Bankr. 74, 76 (Bankr. D. Md. 1990) (may joint creditors lift the stay in bankruptcy to pursue state court remedies when the property is exempt under Section 522(*l*) by reason of a failure to timely object?).

The centrality of exemptions to the Chapter 7 bankruptcy system and the importance of Section 522(*l*) and Rule 4003(b) in that scheme cannot be denied. Only this Court can provide the urgently-needed guidance to the federal courts concerning the proper interpretation of Section 522(*l*) and Rule 4003(b).

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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